

SSB 6349 - H COMM AMD

By Committee on Commerce & Labor

ADOPTED AND ENGROSSED 3/3/2010

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 49.12 RCW to read as follows:

(1) The director shall establish a farm internship pilot project until December 1, 2011, for the employment of farm interns on small farms under special certificates at wages, if any, as authorized by the department and subject to such limitations as to time, number, proportion, and length of service as provided in this section and as prescribed by the department. The pilot project shall consist of two counties, one a county consisting entirely of islands with fewer than fifty thousand residents and one a county that is bordered by the crest of the Cascade mountain range and salt waters with fewer than one hundred fifty thousand residents.

(2) A small farm may employ no more than three interns per year under this section.

(3) A small farm must apply for a special certificate on a form made available by the director. The application must set forth: The name of the farm and a description of the farm seeking the certificate; the type of work to be performed by a farm intern; a description of the internship program; the period of time for which the certificate is sought and the duration of an internship; the number of farm interns for which a special certificate is sought; the wages, if any, that will be paid to the farm intern; any room and board, stipends, and other remuneration the farm will provide to a farm intern; and the total number of workers employed by the farm.

(4) Upon receipt of an application, the department shall review the application and issue a special certificate to the requesting farm within fifteen days if the department finds that:

(a) The farm qualifies as a small farm;

1 (b) There have been no serious violations of chapter 49.46 RCW or
2 Title 51 RCW that provide reasonable grounds to believe that the terms
3 of an internship agreement may not be complied with;

4 (c) The issuance of a certificate will not create unfair
5 competitive labor cost advantages nor have the effect of impairing or
6 depressing wage or working standards established for experienced
7 workers for work of a like or comparable character in the industry or
8 occupation at which the intern is to be employed;

9 (d) A farm intern will not displace an experienced worker; and

10 (e) The farm demonstrates that the interns will perform work for
11 the farm under an internship program that: (i) Provides a curriculum
12 of learning modules and supervised participation in farm work
13 activities designed to teach farm interns about farming practices and
14 farm enterprises; (ii) is based on the bona fide curriculum of an
15 educational or vocational institution; and (iii) is reasonably designed
16 to provide the intern with vocational knowledge and skills about
17 farming practices and enterprises. In assessing an internship program,
18 the department may consult with relevant college and university
19 departments and extension programs and state and local government
20 agencies involved in the regulation or development of agriculture.

21 (5) A special certificate issued under this section must specify
22 the terms and conditions under which it is issued, including: The name
23 of the farm; the duration of the special certificate allowing the
24 employment of farm interns and the duration of an internship; the total
25 number of interns authorized under the special certificate; the
26 authorized wage rate, if any; and any room and board, stipends, and
27 other remuneration the farm will provide to the farm intern. A farm
28 worker may be paid at wages specified in the certificate only during
29 the effective period of the certificate and for the duration of the
30 internship.

31 (6) If the department denies an application for a special
32 certificate, notice of denial must be mailed to the farm. The farm
33 listed on the application may, within fifteen days after notice of such
34 action has been mailed, file with the director a petition for review of
35 the denial, setting forth grounds for seeking such a review. If
36 reasonable grounds exist, the director or the director's authorized
37 representative may grant such a review and, to the extent deemed

1 appropriate, afford all interested persons an opportunity to be heard
2 on such review.

3 (7) Before employing a farm intern, a farm must submit a statement
4 on a form made available by the director stating that the farm
5 understands: The requirements of the industrial welfare act, chapter
6 49.12 RCW, that apply to farm interns; that the farm must pay workers'
7 compensation premiums in the assigned intern risk class and must pay
8 workers' compensation premiums for nonintern work hours in the
9 applicable risk class; and that if the farm does not comply with
10 subsection (8) of this section, the director may revoke the special
11 certificate.

12 (8) The director may revoke a special certificate issued under this
13 section if a farm fails to: Comply with the requirements of the
14 industrial welfare act, chapter 49.12 RCW, that apply to farm interns;
15 pay workers' compensation premiums in the assigned intern risk class;
16 or pay workers' compensation premiums in the applicable risk class for
17 nonintern work hours.

18 (9) Before the start of a farm internship, the farm and the intern
19 must sign a written agreement and send a copy of the agreement to the
20 department. The written agreement must, at a minimum:

21 (a) Describe the internship program offered by the farm, including
22 the skills and objectives the program is designed to teach and the
23 manner in which those skills and objectives will be taught;

24 (b) Explicitly state that the intern is not entitled to minimum
25 wages for work and activities conducted pursuant to the internship
26 program for the duration of the internship;

27 (c) Describe the responsibilities, expectations, and obligations of
28 the intern and the farm, including the anticipated number of hours of
29 farm activities to be performed by the intern per week;

30 (d) Describe the activities of the farm and the type of work to be
31 performed by the farm intern; and

32 (e) Describes any wages, room and board, stipends, and other
33 remuneration the farm will provide to the farm intern.

34 (10) The definitions in this subsection apply throughout this
35 section unless the context clearly requires otherwise.

36 (a) "Farm intern" means an individual who provides services to a
37 small farm under a written agreement and primarily as a means of
38 learning about farming practices and farm enterprises.

1 (b) "Farm internship program" means an internship program described
2 under subsection (4)(e) of this section.

3 (c) "Small farm" means a farm:

4 (i) Organized as a sole proprietorship, partnership, or
5 corporation;

6 (ii) That reports on the applicant's schedule F of form 1040 or
7 other applicable form filed with the United States internal revenue
8 service annual sales less than two hundred fifty thousand dollars; and

9 (iii) Where all the owners or partners of the farm provide regular
10 labor to and participate in the management of the farm, and own or
11 lease the productive assets of the farm.

12 (11) The department shall monitor and evaluate the farm internships
13 authorized by this section and report to the appropriate committees of
14 the legislature by December 31, 2011. The report shall include, but
15 not be limited to: The number of small farms that applied for and
16 received special certificates; the number of interns employed as farm
17 interns; the nature of the educational activities provided to the farm
18 interns; the wages and other remuneration paid to farm interns; the
19 number of and type of workers' compensation claims for farm interns;
20 the employment of farm interns following farm internships; and other
21 matters relevant to assessing farm internships authorized in this
22 section.

23 **Sec. 2.** RCW 49.46.010 and 2002 c 354 s 231 are each amended to
24 read as follows:

25 As used in this chapter:

26 (1) "Director" means the director of labor and industries;

27 (2) "Wage" means compensation due to an employee by reason of
28 employment, payable in legal tender of the United States or checks on
29 banks convertible into cash on demand at full face value, subject to
30 such deductions, charges, or allowances as may be permitted by rules of
31 the director;

32 (3) "Employ" includes to permit to work;

33 (4) "Employer" includes any individual, partnership, association,
34 corporation, business trust, or any person or group of persons acting
35 directly or indirectly in the interest of an employer in relation to an
36 employee;

1 (5) "Employee" includes any individual employed by an employer but
2 shall not include:

3 (a) Any individual (i) employed as a hand harvest laborer and paid
4 on a piece rate basis in an operation which has been, and is generally
5 and customarily recognized as having been, paid on a piece rate basis
6 in the region of employment; (ii) who commutes daily from his or her
7 permanent residence to the farm on which he or she is employed; and
8 (iii) who has been employed in agriculture less than thirteen weeks
9 during the preceding calendar year;

10 (b) Any individual employed in casual labor in or about a private
11 home, unless performed in the course of the employer's trade, business,
12 or profession;

13 (c) Any individual employed in a bona fide executive,
14 administrative, or professional capacity or in the capacity of outside
15 salesman as those terms are defined and delimited by rules of the
16 director. However, those terms shall be defined and delimited by the
17 director of personnel pursuant to chapter 41.06 RCW for employees
18 employed under the director of personnel's jurisdiction;

19 (d) Any individual engaged in the activities of an educational,
20 charitable, religious, state or local governmental body or agency, or
21 nonprofit organization where the employer-employee relationship does
22 not in fact exist or where the services are rendered to such
23 organizations gratuitously. If the individual receives reimbursement
24 in lieu of compensation for normally incurred out-of-pocket expenses or
25 receives a nominal amount of compensation per unit of voluntary service
26 rendered, an employer-employee relationship is deemed not to exist for
27 the purpose of this section or for purposes of membership or
28 qualification in any state, local government or publicly supported
29 retirement system other than that provided under chapter 41.24 RCW;

30 (e) Any individual employed full time by any state or local
31 governmental body or agency who provides voluntary services but only
32 with regard to the provision of the voluntary services. The voluntary
33 services and any compensation therefor shall not affect or add to
34 qualification, entitlement or benefit rights under any state, local
35 government, or publicly supported retirement system other than that
36 provided under chapter 41.24 RCW;

37 (f) Any newspaper vendor or carrier;

1 (g) Any carrier subject to regulation by Part 1 of the Interstate
2 Commerce Act;

3 (h) Any individual engaged in forest protection and fire prevention
4 activities;

5 (i) Any individual employed by any charitable institution charged
6 with child care responsibilities engaged primarily in the development
7 of character or citizenship or promoting health or physical fitness or
8 providing or sponsoring recreational opportunities or facilities for
9 young people or members of the armed forces of the United States;

10 (j) Any individual whose duties require that he or she reside or
11 sleep at the place of his or her employment or who otherwise spends a
12 substantial portion of his or her work time subject to call, and not
13 engaged in the performance of active duties;

14 (k) Any resident, inmate, or patient of a state, county, or
15 municipal correctional, detention, treatment or rehabilitative
16 institution;

17 (l) Any individual who holds a public elective or appointive office
18 of the state, any county, city, town, municipal corporation or quasi
19 municipal corporation, political subdivision, or any instrumentality
20 thereof, or any employee of the state legislature;

21 (m) All vessel operating crews of the Washington state ferries
22 operated by the department of transportation;

23 (n) Any individual employed as a seaman on a vessel other than an
24 American vessel;

25 (o) Any farm intern providing his or her services to a small farm
26 which has a special certificate issued under section 1 of this act;

27 (6) "Occupation" means any occupation, service, trade, business,
28 industry, or branch or group of industries or employment or class of
29 employment in which employees are gainfully employed;

30 (7) "Retail or service establishment" means an establishment
31 seventy-five percent of whose annual dollar volume of sales of goods or
32 services, or both, is not for resale and is recognized as retail sales
33 or services in the particular industry.

34 NEW SECTION. **Sec. 3.** A new section is added to chapter 51.16 RCW
35 to read as follows:

36 The department shall adopt rules to provide special workers'
37 compensation risk class or classes for farm interns providing

1 agricultural labor pursuant to a farm internship program. The rules
2 must include any requirements for obtaining a special risk class that
3 must be met by small farms.

4 NEW SECTION. **Sec. 4.** A new section is added to chapter 50.04 RCW
5 to read as follows:

6 (1) The term "employment" shall not include service performed in
7 agricultural labor by a farm intern providing his or her services under
8 a farm internship program as established in section 1 of this act.

9 (2) For purposes of this section, "agricultural labor" means:

10 (a) Services performed on a farm, in the employ of any person, in
11 connection with the cultivation of the soil, or in connection with
12 raising or harvesting any agricultural or horticultural commodity,
13 including raising, shearing, feeding, caring for, training, and
14 management of livestock, bees, poultry, and furbearing animals and
15 wildlife, or in the employ of the owner or tenant or other operator of
16 a farm in connection with the operation, management, conservation,
17 improvement, or maintenance of such farm and its tools and equipment;

18 (b) Services performed in packing, packaging, grading, storing, or
19 delivering to storage, or to market or to a carrier for transportation
20 to market, any agricultural or horticultural commodity; but only if
21 such service is performed as an incident to ordinary farming
22 operations. The exclusions from the term "employment" provided in this
23 subsection (2)(b) shall not be deemed to be applicable with respect to
24 commercial packing houses, commercial storage establishments,
25 commercial canning, commercial freezing, or any other commercial
26 processing or with respect to services performed in connection with the
27 cultivation, raising, harvesting and processing of oysters or raising
28 and harvesting of mushrooms; or

29 (c) Direct local sales of any agricultural or horticultural
30 commodity after its delivery to a terminal market for distribution or
31 consumption.

32 NEW SECTION. **Sec. 5.** Appropriations made for purposes of this act
33 must be from the state general fund.

34 NEW SECTION. **Sec. 6.** This act expires December 31, 2011."

1 Correct the title.

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